IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 103 OF 2005

Shri Sudhakar Dudha (Dhundappa)Mane
& Ors. .. Appellants
(Orig. Defendants)

Versus

Shankar Daulata Shitode
Deceased by legal heirs :
1(a) Smt. Shalini w/o.Shankar Shirtode
& Ors. ..Respondents

Mr. N.J.Patil for the Appellants.
Mr. R.V. More for Respondents.

CORAM: D.G.DESHPANDE,J.

DATE : 29th September,2005.

P.C.

1. Heard learned Advocates for the Appellants and the Respondents.

2. The Respondent No.1 is the purchaser of the property he having purchased the share of one of the brothers. Before purchasing the property, he has

given a public notice on 3.8.1982. The present appellants gave reply to the said notice on 5.8.1982. Inspite of this reply, the respondent No.1 entered into an agreement and finally purchased the property which is house property by sale deed dated 16.8.1982 and then filed a suit for partition and possession. That suit was decreed. The appeal filed against that order was dismissed. Hence, this Second Appeal.

3. Mr. Patil for the appellant tried to contend that the appellants had given reply to the public notice and asserted his right in the property purchased by the Respondent No.1.

4. This contention of the appellant was rejected by both the Courts below on the ground that the partition was effected by the parties long back and there is a document signed by the appellant. That document has been produced at Exhibit 89 dated 16.8.82. The learned Counsel for the appellant tried to contend that this document being a Deed of partition was registerable and since the same is not registered, that should not have been looked into, accepted and acted upon by both the Courts below. He cited certain authorities in support of his contention i.e. (1) AIR 2002 SC 2526 - Hariday Narain Choudhary vs. Shyam Kishore Singh and (2) AIR 1968 SC 1299 Siromani and

another vs. Hemkumar & others. There is no dispute between the parties of the fact that if a document creates a right in the property may be in the form of partition that may be required for registration. However, the Supreme Court in the aforesaid judgment is clear and upholds the view that if whatever has already happened was merely evidenced by a document, that would not require registration. A perusal of Ex.89 of which document's material portion is reproduced, will show that this document is not a Deed of Partition creating and defining rights of the parties for the first time. It is a memorandum of record of rights that were being exercised by the parties in respect of their respective shares. What is stated therein is the translation of Marathi document "all four brothers by mutual consultation are enjoying the house property and the open space by consent and as per our shares." So this document is a mere repetition of the rights exercised by the brothers or assertion of rights which were created long back or earlier. Therefore, such a document does not require registration. Both the courts below are justified in accepting and acting upon this document denying the claim of the appellant.

There is no merit in this Appeal. The Appeal is dismissed.

(D.G.DESHPANDE,J.)